



# CHILD RECRUITMENT PHENOMENON BETWEEN PROHIBITION AND PRACTICE ACCORDING TO INTERNATIONAL LAW AND JURISPRUDENCE

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## ABSTRACT

This study aims to illuminate the alarming phenomenon of child recruitment, recognized as a profound deviation from normative societal behaviors due to its stark infringement on the rights of a vulnerable demographic. Internationally spotlighted in the 1980s, child recruitment in armed conflicts prompted global efforts aimed at curbing the induction of children into battles by both recognized and unrecognized militant factions. Despite these endeavors, the prevalence of child soldiers has escalated notably in subsequent decades, particularly amid the surge of internal armed conflicts. Such circumstances have relentlessly exposed recruited children to extreme violence and inflicted severe damage, often resulting in either mortality or permanent disability.

In response, a unified international initiative has sought to mitigate this distressing trend by establishing numerous international accords and preemptive measures. The prohibition of child recruitment has been enshrined across a spectrum of international legal instruments and endorsed by international criminal tribunals. Yet, despite rigorous legal frameworks and judicial efforts to eradicate child recruitment and preclude their participation in armed engagements, the practice persists. This ongoing issue underscores a systemic failure among nations to enforce internationally agreed standards designed to combat this grave phenomenon.

## INTRODUCTION

Wars inflict severe and destructive impacts on societies engulfed by them, subjecting individuals to various horrific forms of violence, including rape, sexual exploitation, and genocide. Children, who form a significant segment of the human community, are particularly vulnerable to these dangers due to their age and circumstances, rendering them more prone to exploitation as they lack the means to defend themselves.

Intriguingly, these victims have increasingly become actors and perpetrators in these conflicts, with the issue of child soldiers taking a drastic turn as their involvement in ongoing armed conflicts escalates, transforming child recruitment and use into a prevalent norm rather than an exception that ought to be suppressed and eradicated.

Child recruitment, however, is not a modern-day phenomenon; history records its practice by the Romans in wars, the Soviet Union, and the Nazi party, which established an organization to train children for combat, including their participation in the Vietnam War against the American army, among other instances.

The forced recruitment of children gained international attention in the 1980s, sparking initiatives to diminish their numbers and involvement in conflicts waged by both state and non-state armed factions. Yet, despite these endeavors, the incidence of child soldiers continues to climb more than a decade later, highlighting the persistent challenges in eradicating and curbing this issue.

Consequently, the dire situation of children affected by this phenomenon has propelled the international community to bolster its efforts by enhancing legal frameworks within various sectors of public international law to prevent the escalation of this grave issue, which has notably intensified in several regions, including the Middle East.

Therefore, the critical question arises:

To what extent are the mechanisms established under international law and jurisprudence effective in prohibiting the phenomenon of child recruitment and safeguarding their rights?

To address this question, our analysis will proceed along two axes: the first will elucidate the international protection afforded to recruited children under public international law, and the

second will explore the role of the international criminal judiciary in preventing the recruitment of children and protecting their rights from an alternative viewpoint.

## 1. INTERNATIONAL LEGAL PROTECTION FOR RECRUITED CHILDREN

The widespread participation of children in hostile activities, whether directly or indirectly involved in conflicts, has compelled the international community to take action. To protect these vulnerable individuals and uphold their rights, various international charters have been enacted within the ambit of humanitarian law and international human rights law aimed at curtailing this distressing trend.

### 1.1 Concept and Causes of the Child Recruitment Phenomenon

Globally, the recruitment of children into warfare has emerged as a pervasive and conspicuous issue. Children are exploited by both governmental and non-governmental entities, coerced into participating in armed conflicts, trained in combat, used to transport equipment and weaponry, or to collect intelligence on adversaries, often in return for basic necessities like clothing, shelter, and food.<sup>1</sup>

#### 1.1.1 Definition of a Child Soldier

As defined in the Cape Town Principles, a child soldier is “Any person under 18 years of age who is part of any kind of regular or irregular armed forces or armed group in any capacity, including but not limited to cooks, porters, messengers, and anyone accompanying such groups other than family members. This definition also encompasses girls recruited for sexual exploitation and forced marriage”.<sup>2</sup>

1 Al-Hayad, Z. (2012). Basic Rules for the Protection of Victims of Armed Conflicts. Moroccan Ministry of Culture Publications, p. 339.

2 UNICEF and Working Group for Non-Governmental Organizations on the Convention on the Rights of the Child, (1997, April 27-30). The Cape Town Principles “Principles

This definition highlights several key aspects:

- A. It includes every child, whether forcibly or voluntarily recruited, into any form of regular or irregular armed forces or armed groups.
- B. Involvement in armed conflicts, whether direct or indirect (as implied by roles like cooks and porters), falls under child recruitment.
- C. The definition encompasses both genders, acknowledging that females are exploited during conflicts.

The European Commission recognizes child soldiers as individuals under eighteen who have been involved, either directly or indirectly, in armed conflicts. According to the Paris Principles, a recruited child is defined as "Any person under the age of eighteen who was recruited or used in the past or is currently used by an armed force or group, regardless of the tasks they perform, whether male or female, including but not limited to those serving as fighters, cooks, porters, couriers, spies, or for sexual purposes".<sup>3</sup>

The recruitment methods for children, encompassing both boys and girls, are varied and include:<sup>4</sup>

1. Kidnapping from homes or public spaces by armed forces and groups;
2. Voluntary enlistment driven by survival or familial protection needs, especially for those separated from their families and displaced;
3. The pursuit of revenge;
4. The significant technological advances in weapon manufacturing, increasing small and lightweight weapons, fueling the spread of this phenomenon.

### **1. 1.2 Causes of the Child Recruitment Phenomenon**

Children are often coerced into recruitment through kidnapping, threats, and coercion. Nonetheless, many join armed groups voluntarily, with-

out external pressure, complicating efforts to combat this issue.

Irrespective of the nature of their recruitment, child soldiers are assigned a wide range of tasks, including combat, deploying mines and explosives, recon and spying, as well as serving as guards, couriers, and providing support in logistics, culinary services, domestic labor, and even sexual services.

Statistics from 2001 estimated that around 300,000 children were recruited in 30 conflicts globally, with girls constituting 40%, approximately 120,000, of this number. The integral role of girls in the survival of armed groups is underscored by their productive and reproductive contributions, including intelligence gathering, mine planting, goods and cattle theft, as well as engaging in agriculture, food preparation, and providing services to men and boys.<sup>5</sup>

The primary factors driving the child recruitment phenomenon can be segmented into three main categories:<sup>6</sup>

#### **A. Social reasons**

These include tribal affiliations and loyalty, social disparities, and the tragic loss of parents due to death or displacement from rural areas, compounded by illiteracy. The recruitment tactics of terrorist groups, such as ISIS, aimed at replenishing their ranks with children to offset combat losses, remain obscure yet can be partially discerned through media-reported accounts from victims or their kin.

Typically, these children stem from impoverished backgrounds or challenging social environments characterized by low living standards. Such adversities render them susceptible to exploitation by armed factions, who enlist them into roles grossly unsuitable for their age and physical abilities, often leading to their active engagement in combat.<sup>7</sup>

and Best Practices for Preventing the Recruitment of Children into Armed Forces and for Demobilizing and Socially Reintegrating Child Soldiers in Africa". [Seminar].

3 Guidelines. (2007, February). The Paris Principles concerning children associated with armed forces or armed groups.

4 Jafal, Z. M. S. (2017). The Role of the International Criminal Court in Preventing the Phenomenon of Child Soldiers. *Strategic Visions Magazine*, (January), pp. 10-11.

5 McKnight, J. (2010). Child Soldiers in Africa: A Global Approach to Human Rights Protection, Enforcement and Post-Conflict Reintegration. *African Journal of International and Comparative Law*, 18(2), pp. 113-142.

6 Jean-Herve. (2006). Child Soldiers in Africa: A Singular Phenomenon and the Need for a Historical Perspective. *History Review*, No. 89, (January), p. 1.

7 Al-Darwish, N. (2015). Child Recruitment by Terrorist Groups. *Al-Nahrain Journal*, Al-Nahrain Center for Strategic Studies, (Issue 01), p. 52.

### B. Economic reasons

Dire conditions like hunger and poverty compel the offering of children for military endeavors. In some instances, children voluntarily enlist to seek better living conditions.

### C. Political reasons

Political dynamics significantly influence child recruitment. The escalation of armed conflicts, rampant weaponization, internal discord, and a blatant disregard for international humanitarian norms among combatant groups have intensified this trend.

Consequently, the recruitment of children transcends mere socio-economic triggers. The burgeoning demand from armed factions, coupled with structural, psychological, and social push factors, has exacerbated the utilization of children in conflict zones.

The surge in child recruits correlates with the broader prevalence of this issue, prompting armed groups to view children as substitutes for adult combatants due to adult manpower shortages. This strategy not only aims to sustain the group's viability and bolster its operational capacity but also serves as a tactical maneuver to secure battlefield advantages.<sup>8</sup>

## 1.2 Protection of Child Soldiers in International Charters

The 1949 Geneva Convention lacks specific provisions for the protection of child recruits in armed conflicts. Hence, during the 1971-1972 expert meeting, the International Committee of the Red Cross proposed an article for inclusion in the 1977 Additional Protocol I, mandating that: "Parties to the conflict must undertake all feasible measures to prevent the involvement of children under the age of 15 in hostilities and strictly prohibit their recruitment or voluntary enlistment into their armed forces".<sup>9</sup>

8 Al-Habdan, A. M., et al. (2022). Mechanisms for Reducing the Recruitment of Children in Armed Conflicts. *Security Studies Series*, Naif University Publishing House, accessed on 22-02-2023 at 23:35, available at: <https://nup.nau.edu.sa/index.php/sr/catalog/book/223>.

9 Al-Talafha, F. A.,(2011). Protection of Children in International Humanitarian Law. (1<sup>st</sup> ed.). Dar Al-Thaqafa, pp.

This proposition evolved into Article 77/2 of the First Additional Protocol to the Geneva Convention, which dictates: "Parties to the conflict must exert all possible efforts to ensure that children below fifteen years of age do not directly participate in hostilities and must refrain from recruiting them into their armed forces. The parties should prioritize the older individuals for recruits aged fifteen to eighteen".<sup>10</sup>

This provision specifically forbids the recruitment of children under fifteen by states engaged in international armed conflicts, advocating for preference to be given to older recruits within the fifteen to eighteen age bracket.

For internal conflicts, the Second Additional Protocol stipulates: "Children under fifteen years of age should not be recruited into armed forces or groups, nor allowed to engage in hostilities", underscoring the international legal consensus against the military utilization of young children.

Article 77 of the First Additional Protocol prohibits the direct participation of children in armed conflicts, i.e., bearing arms, but the fourth article of the Second Additional Protocol provides broader protection by totally prohibiting children's participation in any war operations, directly or indirectly, such as transporting ammunition and supplies, and performing espionage and intelligence tasks, etc.

The 1977 Geneva Protocol set the minimum age for children's participation in hostilities at 15 years, which was a step forward and a gain for international humanitarian law at that time. However, the spread of this scourge has increased and expanded in different places around the world, a fact confirmed by the International Committee of the Red Cross, as it is the original custodial authority in monitoring the application of international humanitarian law.

In developing the Convention on the Rights of the Child, considerable emphasis was placed on defining an age limit below which children should be prohibited from engaging in hostilities, raising the threshold from fifteen to eighteen years.

Nevertheless, Article 38 of the 1989 Convention on the Rights of the Child essentially echoed the provisions of the First Additional Protocol of 1977.<sup>11</sup>

106-107.

10 First Additional Protocol. (1977). Article 77, paragraph 2.

11 Creil, F. (1990). The United Nations Convention on the

This inclusion led to an apparent inconsistency, as Article 1 of the Convention distinctly identifies a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.<sup>12</sup>

This definition paradoxically allows for the recruitment of individuals between the ages of fifteen and eighteen, who are still classified as children under the Convention’s initial article. Moreover, while Article 38’s second paragraph explicitly bars children from serving in the armed forces (i.e., regular forces), it neglects to extend this protection to children involved with irregular forces, thereby leaving a significant loophole.<sup>13</sup>

Addressing the prevalent issue of child recruitment, the International Labour Organization promulgated several conventions, with Convention No. 182 regarding the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in 1999 being particularly notable.

This convention categorically defines a child as anyone under the age of eighteen<sup>14</sup> and outlaws the sale and trafficking of children by prohibiting forced labor, inclusive of child recruitment. This enactment holds distinctive legal weight, elevating the child recruitment age threshold from 15 to 18 years amending the gaps identified in the two Additional Protocols of 1977 and the Convention on the Rights of the Child.

In reaction to the escalating child recruitment crisis and concerted global endeavors to eradicate it, an international symposium was convened in Berlin, attracting 22 representatives from both governmental and non-governmental bodies to deliberate on the enlistment of children below the age of 18 in both regular and irregular military factions. The assembly’s chief objective was to advocate for the elevation of the minimum recruitment age from 15 to 18 years.<sup>15</sup>

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Rights of the Child: The Controversial Article 38 on Children in Armed Conflicts. *Publication Journal*, Issue 12, (August), pp. 11-12.

12 Convention on the Rights of the Child. (1989). Article 1.

13 Al-Nadi, M. (2015). Child Soldiers in International Humanitarian Law. *The Arab Future Magazine*, Arab Unity Studies Center, Beirut, Lebanon, (Issue 437), (July), p. 34.

14 International Labour Organization Convention No. 182. (1999). Article 2.

15 Malika, A. (2008). International Standards for Child Protection from Violence. *Algerian Journal of Legal, Economic, and Political Sciences*, Faculty of Law, University of Al-

Furthermore, the Optional Protocol of 2000, ratified by the United Nations General Assembly in May 2000, marked a pivotal enhancement in the protection of child rights, introducing critical stipulations regarding the minimum age for compulsory and voluntary military recruitment. The Protocol mandates that: “States Parties shall adopt all practicable measures to ensure that members of their armed forces who have not reached the age of eighteen years do not directly engage in hostilities”.<sup>16</sup>

Regarding compulsory recruitment, States Parties are obligated to ensure that individuals under the age of eighteen are not forcibly conscripted into their armed forces.<sup>17</sup>

In terms of voluntary or optional recruitment, the Optional Protocol of 2000 institutes a partial prohibition, establishing that the minimum age for voluntary recruitment is sixteen years. Article 3/1 of the Protocol dictates that “States Parties shall raise in years the minimum age of voluntary enlistment into their national armed forces from that set out in paragraph 3 of Article 38 of the Convention on the Rights of the Child...”

This elevation is conditioned upon the safeguards articulated in Article 3 of the 2000 Optional Protocol. For voluntary recruitment, states are required to submit a declaration binding them upon ratification of the Optional Protocol, ensuring adherence to the following criteria:<sup>18</sup>

1. The recruitment process is genuinely voluntary, stemming from the individual’s own free will.
2. The child’s recruitment receives explicit consent from their legal guardians or parents.
3. Comprehensive information about the responsibilities entailed in military service is provided to both the child and their guardians.
4. A legal age requirement mandates that children must furnish reliable proof of age,

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giers, (Issue 02), p. 332.

16 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, (2000). Article 2.

17 Al-Nadi, M. (2015). Child Soldiers in International Humanitarian Law. *The Arab Future Magazine*, Arab Unity Studies Center, Beirut, Lebanon, (Issue 437), (July), p. 39.

18 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, (2000). Article 2.

ensuring they are at least fifteen years old prior to recruitment.<sup>19</sup>

It is important to highlight that these stipulations do not extend to military schools managed or overseen by the state, which accept children not younger than fifteen years as the minimum age.

Concerning the prohibition of child recruitment by armed groups, the Optional Protocol includes a specific clause asserting that non-state armed groups shall not, under any circumstances, recruit or use individuals under the age of eighteen in hostilities.

Article 4/1 of the Protocol states:<sup>20</sup> “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use persons under the age of 18 in hostilities”. This clause unambiguously prohibits these groups from involving children, whether directly or indirectly, in armed conflicts.

Despite the significance of the 2000 Optional Protocol, scrutinizing its initial article reveals that the state’s obligation hinges on the actions undertaken by the state rather than the outcomes and its capability to manage them. A more effective protection for children’s rights could be achieved by substituting the term “take all feasible measures” with “take all necessary measures”.

Additionally, the extent of protection afforded to children in armed conflicts is somewhat limited. The protocol only addresses children’s direct involvement in hostilities, rendering its provisions less robust than those in the Second Additional Protocol to the Geneva Convention of 1977, which prohibits children’s direct and indirect participation in armed conflicts.

The indirect involvement in conflicts, such as intelligence gathering, transmitting orders, or transporting ammunition and food, still places children at substantial risk of physical harm and psychological trauma, comparable to the risks faced by direct combatants.

A notable concern in the Optional Protocol arises from Article 3, which discusses raising the minimum age for voluntary recruitment. The prac-

tical implementation of the safeguards meant to ensure the voluntary nature of recruitment is challenging. In conflict-ridden regions, verifying age can be problematic due to the lack of established birth registration systems.

Furthermore, the protection offered in the initial paragraphs of Article 3 is undercut by a significant exception: the requirement to raise the volunteering age does not apply to military schools controlled or operated by the armed forces. This exception was made during the protocol’s drafting as many state delegations deemed it essential to securing an adequate number of qualified recruits for their national armies.<sup>21</sup>

The preference for a voluntary service system for individuals under eighteen over compulsory recruitment for older individuals has been acknowledged. Military schools are often seen as one of the limited avenues through which young individuals in economically disadvantaged countries can access quality education.

Due to these issues in the first Optional Protocol – regarding the prevention of child recruitment – the United Nations General Assembly adopted the Third Optional Protocol on a communications procedure attached to the Convention on the Rights of the Child, under Resolution 66/138 dated December 19, 2011, which came into effect on April 14, 2014.

A key feature of this protocol is that it enabled children to access their rights through the right to lodge complaints or reports about violations they have suffered under the Convention on the Rights of the Child and the first and second Optional Protocols attached to it. It states that “an individual or group of individuals under the jurisdiction of a State Party, claiming to be victims of a violation by that State Party of any of the rights set forth in any of the following instruments to which that State is a party, or those legally acting on their behalf, may bring complaints:

- A. The Convention;
- B. The Optional Protocol to the Convention on the sale of children, child prostitution, and child pornography;
- C. The Optional Protocol to the Convention on the involvement of children in armed conflict.”<sup>22</sup>

19 Nassira, B. T. (2016/2017). The Legal Status of Children in Armed Conflicts. Master’s thesis, International Law and International Political Relations, Faculty of Law and Political Sciences, University of Mostaganem, p. 61.

20 Optional Protocol to the Convention on the Rights of the Child. (2000). Article 4, paragraph 1.

21 International Review of the Red Cross, (n.d). Issue 893, pp. 797-809.

22 Third Optional Protocol to the Convention on the Rights of

This provides an excellent guarantee for protecting children's rights and addressing the suffering of children and others in many parts of the world due to early recruitment.<sup>23</sup>

Despite the above-mentioned Third Optional Protocol's reference to the possibility of complaints between states regarding violations of the protocol's provisions, it allows these claims to be settled between the states, which contradicts the nature of human rights as inherent rights that cannot be compromised. States often prefer their international relations over complaining or reporting against another state, especially if the victims are not their nationals.

## 2. THE ROLE OF THE INTERNATIONAL CRIMINAL COURT IN PROTECTING THE RIGHTS OF RECRUITED CHILDREN

Despite international efforts to combat the recruitment of children in armed conflicts, the incidence of this violation continues to rise. The International Criminal Court (ICC) plays a pivotal role in addressing this issue. The ICC's approach to child recruitment, particularly in the landmark case of the Prosecutor vs Thomas Lubanga, sheds light on the legal framework and judicial mechanisms employed to counteract this grave concern. This discussion unfolds in two segments: the first elucidates the ICC's legal perspective on child recruitment, and the second delves into the ICC's adjudication in the Lubanga case.

### 2.1 The ICC's Characterization of Child Recruitment

The Rome Statute, which is the foundational treaty of the ICC, explicitly prohibits the recruitment and conscription of children under fifteen

years of age as a war crime, detailed in Article 8, paragraph 2(b)(xxvi). This statute positions the act as a severe breach of the international laws and customs governing international armed conflicts.

Further, Article 8, paragraph 2(e)(vii) of the statute specifies that forcibly or voluntarily recruiting children under fifteen into armed forces or groups or using them to partake actively in hostilities also amounts to a war crime. This is acknowledged as one of the grave violations of the laws and customs in non-international armed conflicts.<sup>24</sup>

The Rome Statute resolves the discrepancies inherent in the Additional Protocols to the 1949 Geneva Conventions, which distinguished between international and non-international armed conflicts, particularly in terms of the deployment of children under fifteen in national armies and the prohibition of such practices among rebel and opposition groups. Importantly, the Statute equalizes the legal treatment of war crimes across international and non-international conflicts, representing a critical advancement in international humanitarian law.<sup>25</sup>

Nonetheless, the specificity of the age limit in the Statute has attracted criticism for its narrow scope, which technically permits the involvement of children aged fifteen and older in armed engagements. This narrow age definition also inadvertently neglects the indirect use of children, particularly girls, for non-combat roles, including sexual exploitation. While Article 7 of the Rome Statute offers extensive protection against crimes against humanity, including enslavement and sexual violence, these protections are contingent upon the context of a widespread or systematic attack against a civilian population.

Consequently, if such violations occur within the dynamics of voluntary enlistment or abduction by armed entities, they may not be classified as crimes against humanity under the Statute. This legal nuance implies that individual criminal accountability is applicable when such offences are perpetrated against non-combatant girls. However, this accountability diminishes once they are

the Child. (2011). Paragraph 1 of Article 2.

23 Jadou, S. T. (2018, April 25-26). Research presented at the Conference on Legislative Reform towards Good Governance and Anti-Corruption. Al-Naba' Foundation for Culture and Media and University of Kufa / Faculty of Law, accessed on 24-02-2023 at 21:30, available at: <https://annabaa.org/arabic/studies/17980>.

24 Wells, S. (2004). Crimes against Child Soldiers in Armed Conflicts. *Tulane Journal of International Law*, 12(Spring), p. 28.

25 Jafal, Z. M. S. (2017). The Role of the International Criminal Court in Preventing the Phenomenon of Child Soldiers. *Strategic Visions Magazine*, (January), p. 17.

integrated into armed forces or groups, effectively stripping them of the protection afforded by the Statute in such circumstances.<sup>26</sup>

## 2.2 The ICC's Judgment in the Case of the Prosecutor vs Thomas Lubanga

This case, associated with the conflict in the Democratic Republic of the Congo (DRC), stands as one of the International Criminal Court's (ICC) most pivotal early cases. Shortly after its inception, the ICC delivered a groundbreaking judgment concerning the recruitment of children and their participation in armed conflicts.

The underlying facts of the case revolve around Rwanda and Uganda's invasion of the DRC between 1996 and 1998, ostensibly to counter the rebel factions that had taken refuge there. By 2000, the conflict evolved as ethnic tensions surged in the Ituri region of the Republic, particularly between the HEMA and LENDU groups. The strife, fueled by disputes over natural resources and arms smuggling, was among the most violent and bloody conflicts since World War II, with children being disproportionately affected.

On April 11, 2002, the DRC acceded to the International Criminal Court, thereby submitting to its jurisdiction. This accession enabled President Joseph Kabila in 2004 to apprise the ICC Prosecutor of the escalating crisis in the Ituri region, leading to a formal request for an investigation. Consequently, in March 2006, the Court issued an arrest warrant for Thomas Lubanga, the founder of the Union of Congolese Patriots, who was subsequently apprehended and held until his trial's conclusion.<sup>27</sup>

On January 29, 2007, Lubanga was formally charged by the Court with war crimes, specifically for recruiting and enlisting children under fifteen years of age and actively deploying them in hostilities through the armed forces he commanded during the 2002-2003 Ituri conflict. Reports suggest that approximately 30,000 boys and girls were forcibly enlisted during this period.

Thomas Lubanga faced charges for the recruit-

ment and conscription of children under the age of 15 in an international conflict, as delineated in paragraph 2(b) of Article 8 and paragraph 3(a) of Article 25 of the Rome Statute, covering the period from early September 2002 to June 2, 2003.

Further charges were levied against him for the recruitment and conscription of children under 15 years old and their utilization in hostilities during an internal armed conflict, pursuant to paragraph 2(e) of Article 8, from June 2, 2003, to August 13, 2003. The demarcation between these charges reflects the nature of the conflict; the initial phase was deemed international due to the involvement of foreign nations, whereas the subsequent phase was classified as internal.<sup>28</sup>

In 2008, the United Nations Special Representative for Children and Armed Conflict, serving as an expert, provided a brief to the court. This document elucidated that recruitment, whether through compulsion or volunteering, should be regarded uniformly in the context of child recruitment, with no substantive legal distinction between the two forms.

On March 14, 2012, the court pronounced its sentence for Thomas Lubanga, addressing the trio of crimes for which he was found guilty:<sup>29</sup>

- A 13-year incarceration for recruiting children under 15 into the armed forces under his command.
- A 12-year prison term for enlisting children under 15 in those forces.
- A 14-year sentence for the active and direct involvement of children under 15 in hostilities.

Given the sentencing range from 12 to 14 years, the judiciary opted for a unified 14-year sentence, recognizing the six years Lubanga had already spent in detention. This sentencing decision ignited post-verdict debates as, notwithstanding the ruling's significance as an international criminal precedent, the approach of consolidating sentences and applying the maximum penalty under the Rome Statute was perceived as excessively harsh relative to the gravity of the offences.

26 *Ibid*, p. 18.

27 Drumbl, M. A. (2007). International Decision: Prosecutor v. Thomas Lubanga. *American Journal of Law*, 101, p. 842.

28 Jafal, Z. M. S. (2017). The Role of the International Criminal Court in Preventing the Phenomenon of Child Soldiers. *StrategicVisions Magazine*, (January), pp. 19-20.

29 *Ibid*, pp. 19-20.

## CONCLUSION

Safeguarding children in conflict zones remains a paramount concern for the global community, as reflected in the extensive legal frameworks of public international law, encompassing international humanitarian law, human rights law, and international criminal law. These frameworks are principally designed to eradicate the malpractice of child recruitment and utilization in conflicts, whether directly or indirectly.

Despite the comprehensive legal measures in place, infringements continue to surface, particularly in the tumultuous regions of the Middle East and Africa. Alarming reports from the United Nations highlight the grim prospect of losing an entire generation to the recruitment drives of extremist entities such as ISIS, Boko Haram, and the Houthis.

In light of the persistent conflicts and the unabated employment of children in combat roles, there is an urgent need to pivot the discourse on child recruitment towards a more nuanced understanding of the security implications engendered by their exploitation in warfare. Acknowledging this issue as a security imperative, rather than solely a moral or ethical quandary, is crucial for formulat-

ing effective deterrents. To this end, we advocate for the following strategic recommendations:

- Instituting a uniform recruitment age threshold of 18 in all legal frameworks, with a particular emphasis on amending the Rome Statute of the International Criminal Court, to categorically ban the recruitment of individuals aged between 15 and 18 years.
- Aligning national laws with international standards to efficaciously tackle this issue.
- Creating a global mechanism for child recruits' demobilization and societal reintegration.
- Providing unwavering support for both national and international laws that endeavor to prevent and eliminate the scourge of child recruitment and exploitation in conflicts.
- Refining the sentencing paradigm of the International Criminal Court to introduce a methodology that cumulates the penalties for multiple offences, as opposed to consolidating them into the most severe penalty, thus ensuring that the adjudicated sentences are commensurate with the seriousness of the war crimes committed.

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## BIBLIOGRAPHY

### Normative material:

1. International Labour Organization. (1999). Convention No. 182.
2. The Convention on the Rights of the Child. (1989).
3. The First Additional Protocol to the Geneva Conventions. (1977).
4. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. (2000).

### Scientific literature:

1. Al-Habdan, A. M., Shawky, M. M., & Al-Talhi, I. M. (2022). Mechanisms for Reducing the Recruitment of Children in Armed Conflicts. (1<sup>st</sup> ed.). Naif University Publishing House. Available at: Naif University Publishing House.
2. Al-Talafha, F. A. (2011). Protection of Children in International Humanitarian Law. (1<sup>st</sup> ed.). Dar Al-Thaqafa.
3. Al-Hayad, Z. (2012). Basic Rules for the Protection of Victims of Armed Conflicts. Moroccan Ministry of Culture Publications.
4. Nassira, B. T. (2016/2017). The Legal Status of Children in Armed Conflicts. Master's thesis, International Law and International Political Relations, Faculty of Law and Political Science, University of Mostaganem.

5. 5. Malika, A. (2008). International Standards for Child Protection from Violence. *Algerian Journal of Legal, Economic and Political Sciences*, Faculty of Law, University of Algiers, Issue 02.
6. Creil, F. (1990). The United Nations Convention on the Rights of the Child: The Controversial Article 38 on Children in Armed Conflict. *Publication Journal*, Issue 12, (August).
7. International Review of the Red Cross, (No Year Provided). Issue 893.
8. Jean-Herve. (2006). Les enfants soldats d'Afrique: un phénomène singulier sur la nécessité du regard historique. *History Review*, No. 89, (January).
9. Drumbl, M. A. (2007). International Decision: Prosecutor v. Thomas Lubanga. *American Journal of Law*, 101.
10. McKnight, J. (2010). Child Soldiers in Africa: A Global Approach to Human Rights Protection, Enforcement and Post-Conflict Reintegration. *African Journal of International and Comparative Law*, 18(2).
11. Al-Nadi, M. (2015). Child Soldiers in International Humanitarian Law. *The Arab Future Magazine*, Arab Unity Studies Center, Beirut, Lebanon, Issue 437, (July).
12. Al-Darwish, N. (2015). Child Recruitment by Terrorist Groups. *Al-Nahrain Journal*, Al-Nahrain Center for Strategic Studies, Issue 01.
13. Wells, S. (2004). Crimes against Child Soldiers in Armed Conflicts. *Tulane Journal of International Law*, 12(Spring).
14. Jadou, S. T. (2018). Paper presented at the Conference on Legislative Reform towards Good Governance and Anti-Corruption. Al-Naba' Foundation for Culture and Media and University of Kufa / Faculty of Law, April 25-26, 2018. Available at: Al-Naba' Foundation.
15. Jafal, Z. M. S. (2017). The Role of the International Criminal Court in Preventing the Phenomenon of Child Soldiers. *Strategic Visions Magazine*, United Arab Emirates, (January).